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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

MAR 11 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Revision of Part 22 and Part 90 of)	
the Commission's Rules to Facilitate)	
Future Development of Paging Systems)	WT Docket No. 96-18
Band by the Private Land Mobile)	
Radio Service)	
)	
Implementation of Section 309(j) of)	
the Communications Act -- Competitive)	PP Docket No. 93-253
Bidding)	

REPLY COMMENTS REGARDING INTERIM LICENSING PROPOSAL

A+ Network, Inc. ("A+"), by its attorneys, and pursuant to Section 1.415 of the Commission's Rules, hereby submits reply comments addressing initial comments of certain other parties as to the interim licensing proposals set forth in the Notice of Proposed Rule Making in the captioned proceeding.^{1/} For its reply comments A+ states as follows:

Procedural Matters

In addition to proposing the substantial permanent revision of the Commission's paging licensing standards and procedures, the NPRM set forth certain interim limitations on the licensing of paging facilities during the pendency of this proceeding.^{2/} The NPRM directed that comments addressing the Commission's interim licensing proposals be submitted by March 1,

^{1/} Notice of Proposed Rule Making, WT Docket No. 96-18, PP Docket No. 93-253, FCC 96-52 (released February 9, 1996) (hereinafter "NPRM").

^{2/} NPRM, at ¶ 139-149.

1996, and that reply comments be submitted by March 11, 1996. A+ timely submitted initial comments in this proceeding, and now submits these reply comments as of the date specified by the NPRM for such submissions. These reply comments are intended to be read in the context of PCP licenses and facilities, particularly those in the 929-930 MHz band.

Interim Modification and Expansion

A common theme running through the initial comments on the interim licensing proposal is the critical need of incumbent paging licensees to be able to expand or modify their presently authorized systems to meet subscriber demand and competitive challenges.^{3/} In this regard, the commenters, including A+, were almost unanimous in their support of the Commission's stated intention to allow system expansion and modification during the pendency of this proceeding. Many commenters, however, proposed significant additions and changes to the interim expansion and modification procedures proposed by the NPRM. A+ submits that certain of the commenters' concerns and suggestions deserve the Commission's careful consideration.

Several commenters expressed concern that an incumbent licensee could effectuate interim expansion or modification of its system only if "such additions or modifications do not expand

^{3/} See, e.g., initial comments of AACCS Communications, Inc., et al ("Joint Commenters"); Ameritech Mobile Services, Inc. ("Ameritech"); Consolidated Communications Mobile Services, Inc. ("Consolidated"); and Pacific Bell.

the interference contour of the incumbent's existing system."^{4/}

The concerns of the commenters addressing this issue generally fell into two categories: (i) that existing system "interference contours" are not the appropriate outer boundaries for interim system expansion or modification;^{5/} and (2) that any universally applied limitation will unduly restrict a licensee's ability to configure its system for optimal technical, business or subscriber benefit.

No Limitation to Existing Interference Contours

The first concern cited above arises out of the fact that protection presently is provided to 929 MHz licensees through specified transmitter site mileage separations, which separations are predicated on the interference contour of a benchmark station operating at 1 kw with a 1000' antenna height.^{6/} Such mileage separations have little relevance to the actual "interference contours" of existing paging system sites. Instead, virtually all 929 MHz incumbents, and certainly those presently qualified for local or regional exclusivity, have designed their systems and developed their business plans in reliance upon the protection afforded by the mileage separations, and in anticipation of being able to expand those systems in their exclusivity area.

^{4/} NPRM, at ¶ 140 (emphasis added).

^{5/} See, initial comments of Source One Wireless, Inc. and Paging Partners Corporation.

^{6/} 47 C.F.R. § 90.495(b)(2).

For the Commission to now limit incumbent licensees expansion to existing system "interference contours" will completely disrupt legitimately developed business plans and will prematurely terminate the system expansions presently being diligently implemented by incumbent licensees.^{7/} In short, the NPRM's abrupt imposition of "interference contour" limitations on 929 MHz paging system expansion constitutes an inefficient and unfair disruption of an incumbents ability to meet the public's demand for paging service. Such disruption is especially inequitable when one considers that an incumbent licensee previously had no reason to factor "interference contours" into the plans for its system design or implementation.

In light of the foregoing, A+ supports all comments urging that incumbent 929 MHz licensees be permitted interim system expansion to the extent the resulting actual interference contours of those systems do not extend beyond the present presumed composite system interference contours (premised on facilities at 1 kw and 1000' HAAT), and without any limitation restriction based on the actual values attributable to the present component sites in those systems. In addition, A+ urges that "existing" contours be construed to include those of

^{7/} A+ takes issue with the comments of American Paging, Inc. and the Joint Commenters to the extent either of those comments support the "secondary licensing" of facilities established during the pendency of this proceeding and which expand the "interference contours" of existing systems. A+ submits that "secondary licensing" is not a true licensing of an exclusive use frequency, and has no effect other than to expose both the public and an incumbent licensee to a future loss of service.

facilities proposed by any pending applications, as well as those of presently established or authorized facilities.

Permissible System Expansion

Several commenters also suggest that, during the pendency of this proceeding, incumbent licensees of paging systems should be permitted to expand their systems beyond existing interference contours. For example, Consolidated suggests allowing expansion into "adjacent areas"; Ameritech urges allowing establishment of new sites within 40 miles of a licensee's existing sites; and the Joint Commenters urge reiterative 40 mile extensions to new sites. These commenters and others note that restriction of system expansion to existing contours would unduly hinder the logical and efficient expansion of systems in response to either technical requirements or the demands of subscribers and the marketplace. A+ submits that such commenter suggestions should be adopted by the Commission, with one proviso.

Under no circumstance should an incumbent licensee, in the course of any interim system expansion, be permitted to place a facility site within the 70 mile protected contour of another licensee's co-channel facility. Such protection against interim intrusion must be afforded to any other co-channel facility which is the subject of an application pending as of the date of the NPRM's adoption, as well as to any co-channel facility which presently is established or authorized.

To allow otherwise would permanently impair an existing licensee's rights, including, but not limited to, that licensee's

own expansion rights, prior to the conclusion of this rulemaking proceeding. During this proceeding, the Commission should do nothing which would have the effect of prematurely affecting the relative rights of its incumbent paging licensees. Any limitation of one licensee's present rights in favor of another licensee without a proper rulemaking or adjudicatory proceeding would be a violation of the affected licensee's due process rights under the Communications Act, the Administrative Procedures Act, and the Commission's Rules. Instead, during this proceeding, the Commission must preserve the status quo ante with regard to the relative positions of existing licensees.

Interim Application Freeze

Certain commenters object to the Commission's imposition of a freeze on the filing of new applications during the pendency of this proceeding.^{8/} The Commission imposed the freeze to prevent speculation in paging authorizations, and to preserve any remaining unused paging spectrum pending the outcome of this proceeding. Without taking a position on other comments on the application freeze, A+ hereby supports grant of the relief sought by certain commenters for a limited, identifiable class of applications.

Apparently, certain paging applications had been submitted to the coordinating body, Personal Communications

^{8/} Under the freeze, paging applications not filed with the Commission prior to the date on which the Commission adopted the NPRM cannot be submitted for filing. Applications which were filed prior to that date are to be processed to grant in the normal course.

Industry Association ("PCIA"), prior to the freeze date, but had not been filed with the Commission by that date. A+ agrees with those seeking relief for those applications that little, if any, harm will be done to the freeze's objectives by allowing the filing and processing of a finite number of applications. In addition, as the applications in question were "in the pipeline" prior to public notice of this proceeding and its proposals, they cannot be considered "speculative" applications seeking to exploit this proceeding or its proposed outcome. In any event, the integrity of PCIA and its procedures affords the Commission the best assurance against any abuse arising out of a limited exception to the freeze.

In sum, A+ urges the Commission to accept for filing any 929 MHz application forwarded to the Commission by PCIA, as long as PCIA certifies to the Commission that such application was received by PCIA prior to February 7, 1996.

Respectfully submitted,

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